

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

WASHINGTON HARBOUR, SUITE 400

NEW YORK, NY

3050 K STREET, NW

FACSIMILE

CHICAGO, IL

WASHINGTON, D.C. 20007-5108

(202) 342-8451

STAMFORD, CT

www.kelleydrye.com

PARSIPPANY, NJ

(202) 342-8400

DIRECT LINE: (202) 342-8531

BRUSSELS, BELGIUM

EMAIL: gmorelli@kelleydrye.com

AFFILIATE OFFICES

MUMBAI, INDIA

November 24, 2009

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: *Notice of Ex Parte Presentation: Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92; High-Cost Universal Service Support, WC Docket No. 05-337*

Dear Ms. Dortch:

Today, Brad Lerner of Cavalier Telephone, Lisa Youngers, of XO Communications, LLC, and Brad Mutschelknaus and the undersigned, of Kelley Drye & Warren LLP, met with Commissioner Baker's Acting Legal Advisor, Christi Shewman, to discuss the above-captioned proceedings.

The attached document describes the specific points regarding intercarrier compensation and universal service support reform addressed during the meeting.

Please contact the undersigned at (202) 342-8531 if you have any questions regarding this letter.

Respectfully submitted,


Genevieve Morelli

Attachment

ICC/USF REFORM DISCUSSION POINTS

1. Reform of the current intercarrier compensation and universal service funding schemes is not a necessary part of the National Broadband Plan the Commission must present to Congress in February 2010.
2. However, regardless whether the Commission chooses to include intercarrier compensation and universal service funding reforms in its National Broadband Plan or to address these issues separately, reform should be structured in the following manner.
3. Generally, the Commission should take the discrete steps that are appropriate now and conduct further proceedings during phase-in of those reforms to see what, if any, additional actions are necessary.
4. Intercarrier Compensation
 - (a) The Commission could reasonably require LECs over time to reduce their intrastate terminating switched access rates to interstate rate levels.
 - (i) Given the critical importance of intercarrier compensation revenue flows to LEC business plans, this reform must be implemented on a phased-in basis.
 - (ii) A four-year implementation schedule would allow LECs to adjust their business plans appropriately.
 - (b) The Commission should immediately resolve the long-standing confusion and uncertainty regarding the regulatory treatment of IP-PSTN traffic by ruling that going-forward all IP-PSTN traffic is jurisdictionally interstate and IP-PSTN interexchange service providers will be billed switched access charges regardless of how such traffic is routed.
 - (i) The Commission should make clear that this action is prospective-only to avoid needless and destructive litigation over past practices.
 - (c) The Commission should conduct a further proceeding aimed at establishing a uniform terminating rate for all traffic. In the interim, current TELRIC-based transport and termination rates should be maintained. The uniform rate ultimately adopted by the Commission must adhere to the following principles:
 - (i) The rate must be cost-based (bill-and-keep is not appropriate).
 - (ii) The rate must be prospective-only to avoid retroactive claims.

- (iii) The rate must be phased in over a reasonable period to allow carriers to adjust their business plans.
 - (d) Any revenue recovery mechanism adopted by the Commission must be competitively-neutral.
5. Universal Service Funding
- (a) Contribution Methodology
 - (i) No party has shown why the current revenues-based system is broken beyond repair and would not work if the contribution base is broadened to include information services and (assuming a congressional modification to Sec. 254) intrastate services.
 - (ii) If the Commission nevertheless decides that the current contribution scheme should be replaced, the current record does not provide a sufficient basis for the Commission to take any action.
 - (iii) The Commission should publish the details of any universal service support contribution proposal that it is considering and provide the public with a meaningful opportunity to review and provide comment.
 - (iv) The Commission should not adopt a numbers-based contribution mechanism.
 - (1) A numbers-based mechanism is not forward-looking. It would only provide a temporary “fix” as alternatives to traditional numbering rise in use.
 - (2) A numbers-based mechanism could lead to gaming of the system as carriers implement changes to avoid or hide use of numbers.
 - (3) A numbers-based mechanism could result in a shrinking of the base. For example, a numbers-based system would not capture big pipes or services that do not use numbers. Exceptions (e.g., schools/hospitals) also would shrink the base.
 - (4) A numbers-based mechanism would penalize low volume customers, especially those with multiple phone numbers.
 - (5) The current numbering database was not intended to be used as a vehicle for assessing USF contributions and does not offer an accurate way to track who should be paying on what number.

- (6) A numbers-based mechanism captures intrastate-only numbers and the Commission currently lacks statutory authority to bring those numbers into the federal USF plan.
- (v) The Commission should reject all hybrid numbers/connections and numbers/revenues contribution proposals. These systems would be more complex, costly, and difficult to administer than the current revenues-based system.
 - (1) A hybrid system would require contributors to respect complex and arbitrary distinctions (e.g., residential/wireless v. business customers; NANP numbers v. NANP equivalents, etc.).
 - (2) A hybrid system would require carriers to maintain current revenue tracking systems while adopting new tracking mechanisms to, for example, ascertain number assignment and report numbering usage.
 - (3) A hybrid system would require modifications to billing systems, accounting practices, and information technology resources to calculate and recover contributions.
 - (4) A hybrid system would create additional opportunities for arbitrage.
 - (5) A hybrid system would make compliance efforts by regulatory authorities more difficult and expensive.
- (vi) There is insufficient detail on how a connections-based mechanism would work. At least two proposals for a connection-based mechanism have been offered but these proposals appear to be in conflict with each other and neither proposal is sufficiently detailed to allow for constructive analysis and comment.
- (b) Distribution Methodology
 - (i) The high-cost fund must not be permitted to continue to grow.
 - (1) The Nov. 5th NCTA petition proposes an interesting mechanism for driving down the size of the high-cost fund that should be explored.
 - (ii) The Commission should not use any universal service funding mechanism as a make-whole revenue recovery vehicle for ILECs forced to reduce switched access rates through intercarrier compensation reform.